

AMENDED IN SENATE JUNE 6, 2016  
AMENDED IN ASSEMBLY MAY 3, 2016  
AMENDED IN ASSEMBLY APRIL 4, 2016

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1799**

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**Introduced by Assembly Member Mayes**  
*(Coauthors: Senators Bates and Huff)*

February 8, 2016

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An act to amend Sections 5100, 5105, and 5145 of the Civil Code, relating to common interest developments.

LEGISLATIVE COUNSEL'S DIGEST

AB 1799, as amended, Mayes. Common interest developments: association governance: elections.

The Davis-Stirling Common Interest Development Act defines and regulates common interest developments that are not a commercial or industrial common interest development. The act requires a common interest development to be managed by an association, requires the association to select one or 3 independent 3rd parties as an inspector or inspectors of elections, and generally requires the association's elections regarding assessments legally requiring a vote, the election and removal of directors, amendments to the governing documents, or the grant of exclusive use of common area, to be conducted by the inspector or inspectors of elections in accordance with specified rules and procedures. The act excepts from these election requirements an election of directors if the governing documents of the association provide that one member from each separate interest is a director.

This bill would additionally except from those election requirements an election of directors if the election is uncontested, as defined, and would provide a procedure for an election to be declared as uncontested. The bill adds 2 additional election requirements that would ensure an announcement of an election and notification of nomination procedures is provided in a specific manner and would ensure a member ~~in good standing~~ *who meets specified qualification requirements* is not denied the right to vote or the right to be a candidate for director. The bill would authorize a cause of action alleging a violation of these and other specified election requirements to be brought in small claims court if the amount of the demand does not exceed the jurisdiction of that court.

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1     SECTION 1. Section 5100 of the Civil Code is amended to  
2     read:  
3     5100. (a) Notwithstanding any other law or provision of the  
4     governing documents, elections regarding assessments legally  
5     requiring a vote, the election and removal of directors, amendments  
6     to the governing documents, or the grant of exclusive use of  
7     common area pursuant to Section 4600 shall be held by secret  
8     ballot in accordance with the procedures set forth in this article.  
9     (b) This article also governs an election on any topic that is  
10    expressly identified in the operating rules as being governed by  
11    this article.  
12    (c) The provisions of this article apply to both incorporated and  
13    unincorporated associations, notwithstanding any contrary  
14    provision of the governing documents.  
15    (d) The procedures set forth in this article shall apply to votes  
16    cast directly by the membership, but do not apply to votes cast by  
17    delegates or other elected representatives.  
18    (e) In the event of a conflict between this article and the  
19    provisions of the Nonprofit Mutual Benefit Corporation Law (Part  
20    3 (commencing with Section 7110) of Division 2 of Title 1 of the  
21    Corporations Code) relating to elections, the provisions of this  
22    article shall prevail.  
23    (f) Directors shall not be required to be elected pursuant to this  
24    article if the governing documents provide that one member from

1 each separate interest is a director, or if the election of directors  
2 is uncontested. For purposes of this subdivision, an election of  
3 directors is uncontested if the number of candidates for election,  
4 including write-in candidates, if applicable, does not exceed the  
5 number of directors to be elected at that election and the association  
6 has declared the election is uncontested.

7 (1) An association may declare an election of directors is  
8 uncontested only if all of the following procedures have been  
9 satisfied:

10 (A) The election rules required by Section 5105 have been  
11 adopted and complied with for the election.

12 (B) All declared candidates were nominated before the deadline  
13 for nominations and in accordance with all lawful provisions of  
14 the association's governing documents.

15 (C) The inspector of elections has informed the board that the  
16 number of candidates does not exceed the number of directors to  
17 be elected at that election.

18 (D) The board votes in open session to declare the election is  
19 uncontested after a hearing during an open board meeting where  
20 members are able to make objections to the board making that  
21 declaration.

22 (E) At least 20 days before the board meeting for the vote to  
23 declare the election is uncontested, the association provides general  
24 notice to all members as set forth in Section 4045 of all of the  
25 following:

26 (i) The intention of the board to vote at a regular board meeting  
27 to declare the election of directors is uncontested, and giving date,  
28 time, and place of that board meeting.

29 (ii) A disclosure to members of the names of all candidates,  
30 however nominated, including self-nomination, who will be  
31 declared elected if the board declares the election is uncontested.

32 (iii) The right of any member to appear at the board meeting  
33 and make an objection to the board declaring the election is  
34 uncontested before the board votes on the matter.

35 (F) The names of all candidates, however nominated, the general  
36 notice required by subparagraph (E), any objection to the board  
37 making the declaration that the election of directors is uncontested,  
38 and the board vote declaring the election of directors is uncontested  
39 shall be recorded in the meeting minutes.

(2) (A) If the association's governing documents provide for write-in votes on the ballot, the association shall allow 15 days after the board meeting described in subparagraph (D) of paragraph (1) for a write-in candidate to submit his or her name to the inspector of elections. In the event one or more write-in candidates are timely submitted and additional candidates result in the total number of candidates exceeding the number of directors to be elected at that election, an election shall be held pursuant to general election rules as provided in this article. If after the 15-day period the total number of candidates, including the number of write-in candidates, does not exceed the number of directors to be elected at that election, the uncontested election results shall be sealed and become effective immediately, with any write-in candidates added as members. The new board shall take office immediately following the sealing of the election.

(B) If an association's governing documents do not provide for write-in votes on the ballot, as provided by subparagraph (A), then the association must provide at least 15 days' general notice of a self-nomination process following the board determination described in subparagraph (D) of paragraph (1).

SEC. 2. Section 5105 of the Civil Code is amended to read:

5105. (a) An association shall adopt rules, in accordance with the procedures prescribed by Article 5 (commencing with Section 4340) of Chapter 3, that do all of the following:

(1) Ensure that if any candidate or member advocating a point of view is provided access to association media, newsletters, or Internet Web sites during a campaign, for purposes that are reasonably related to that election, equal access shall be provided to all candidates and members advocating a point of view, including those not endorsed by the board, for purposes that are reasonably related to the election. The association shall not edit or redact any content from these communications, but may include a statement specifying that the candidate or member, and not the association, is responsible for that content.

(2) Ensure access to the common area meeting space, if any exists, during a campaign, at no cost, to all candidates, including those who are not incumbents, and to all members advocating a point of view, including those not endorsed by the board, for purposes reasonably related to the election.

1 (3) Specify the qualifications for candidates for the board and  
2 any other elected position, and procedures for the nomination of  
3 candidates, consistent with the governing documents. A nomination  
4 or election procedure shall not be deemed reasonable if it disallows  
5 any member from nominating himself or herself for election to the  
6 board.

7 (4) Specify the qualifications for voting, the voting power of  
8 each membership, the authenticity, validity, and effect of proxies,  
9 and the voting period for elections, including the times at which  
10 polls will open and close, consistent with the governing documents.

11 (5) Specify a method of selecting one or three independent third  
12 parties as inspector or inspectors of elections utilizing one of the  
13 following methods:

14 (A) Appointment of the inspector or inspectors by the board.

15 (B) Election of the inspector or inspectors by the members of  
16 the association.

17 (C) Any other method for selecting the inspector or inspectors.

18 (6) Allow the inspector or inspectors to appoint and oversee  
19 additional persons to verify signatures and to count and tabulate  
20 votes as the inspector or inspectors deem appropriate, provided  
21 that the persons are independent third parties.

22 (7) Ensure that an announcement of an election and notification  
23 of nomination procedures, including self-nomination, shall be  
24 provided to all members by general notice as set forth in Section  
25 4045 at least 60 days before any election for directors.

26 (8) Ensure a member ~~in good standing, who satisfies any the~~  
27 ~~lawful requirements specified~~ *qualifications adopted pursuant to*  
28 *paragraph (3) and by the association's governing documents*, shall  
29 not be denied the right to vote or the right to be a candidate for  
30 director.

31 (9) *Ensure a member who satisfies the lawful qualifications*  
32 *adopted pursuant to paragraph (4) and by the association's*  
33 *governing documents shall not be denied the right to vote.*

34 (b) Notwithstanding any other law, the rules adopted pursuant  
35 to this section may provide for the nomination of candidates from  
36 the floor of membership meetings or nomination by any other  
37 manner. Those rules may permit write-in candidates for ballots.

38 SEC. 3. Section 5145 of the Civil Code is amended to read:

39 5145. (a) A member of an association may bring a civil action  
40 for declaratory or equitable relief for a violation of this article by

1 the association, including, but not limited to, injunctive relief,  
2 restitution, or a combination thereof, within one year of the date  
3 the cause of action accrues. Upon a finding that the election  
4 procedures of this article, or the adoption of and adherence to rules  
5 provided by Article 5 (commencing with Section 4340) of Chapter  
6 3, were not followed, a court may void any results of the election.

7 (b) A member who prevails in a civil action to enforce the  
8 member's rights pursuant to this article shall be entitled to  
9 reasonable attorney's fees and court costs, and the court may  
10 impose a civil penalty of up to five hundred dollars (\$500) for each  
11 violation, except that each identical violation shall be subject to  
12 only one penalty if the violation affects each member of the  
13 association equally. A prevailing association shall not recover any  
14 costs, unless the court finds the action to be frivolous,  
15 unreasonable, or without foundation.

16 (c) A cause of action under Sections 5100 to 5130, inclusive,  
17 with respect to access to association resources by a candidate or  
18 member advocating a point of view, the receipt of a ballot by a  
19 member, the counting, tabulation, or reporting of, or access to,  
20 ballots for inspection and review after tabulation, or a violation of  
21 a rule required by Section 5105 may be brought in small claims  
22 court if the amount of the demand does not exceed the jurisdiction  
23 of that court.